

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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<b>TOWN OF FRAMINGHAM REQUEST FOR</b>	)	
<b>DETERMINATION OF RATES APPLICABLE TO</b>	)	
<b>TRANSPORTATION AND TREATMENT OF SEWAGE</b>	)	<b>D.T.E. 02-46</b>
<b>PURSUANT TO INTERMUNICIPAL AGREEMENT</b>	)	
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**TOWN OF FRAMINGHAM’S RESPONSE TO THE  
TOWN OF ASHLAND’S MOTION FOR CLARIFICATION**

The Town of Framingham (“Framingham”) hereby responds to the Town of Ashland’s Motion for Clarification of the Department’s February 13, 2004 Final Order. Framingham denies that there is any need for clarification of the Final Order, for the reasons set forth below.

Ashland first asks the Department to further explain the rationale for its finding that “[m]ore than a discrete subset of Framingham’s system is used to provide service to Ashland.” (Ashland’s Motion, p. 1). This sentence appears in the first full paragraph on page 17 of the Department’s Final Order. Framingham submits that no further clarification of the DTE’s “rationale” is necessary, when one considers this sentence not in isolation, but in the context of the entire paragraph in which this sentence appears (not to mention the entire context of the 51-page order). In the preceding sentence of the pertinent paragraph on page 17, the Department found that “the physical extent of Framingham’s system needed to accommodate Ashland’s sewage varies, depending on the volume of flow and hydraulic conditions within Framingham’s sewerage system at any given time.” (Final Order, p. 17). In support of this finding, the Department cited to the testimony of Framingham’s expert witnesses, and Framingham’s discovery response identifying those pipes through which Ashland’s sewage flows on an intermittent rather than a daily basis. (Id.) It logically follows from this finding that Ashland

will not always use the same set of pipes in Framingham's system, as the pipes utilized will vary "depending on the volume of flow and hydraulic conditions." (Id.) Thus, Framingham submits that Ashland has not demonstrated a need for further clarification of the DTE's finding that "[m]ore than a discrete subset of Framingham's system is used to provide service to Ashland."

Ashland next requests that the Department clarify its finding on page 20 of the Final Order that, even if Ashland's flow were measured as a percentage of the flow through that part of Framingham's system tributary to those pipelines utilized by Ashland, rather than as a percentage of the flow through the entire system, the result would be the same. Framingham respectfully submits that there is no need for further clarification of this finding, when the referenced part of the Order is read in its entirety. The Department devoted three pages to an analysis of Ashland's alternative "tributary flow formula." (Final Order, pp. 18-20). The Department noted that the parties were in agreement that the total flow through the tributary area constituted approximately 60% of the total flow through Framingham's system. (Final Order, p. 19). The Department then found that Ashland's flow through the tributary area had to be determined as a percentage share of that 60% flow. (Id. at pp. 19-20). The Department further found that it also would have to make a corresponding reduction (60%) in O&M costs, but noted that the actual costs of O&M attributable to the tributary system could only be estimated. (Id. at p. 20). The Department concluded that the "mathematical effect of adjusting both total flow and total O&M by the same factor is for these adjustments to cancel each other out," citing to calculations demonstrating that Ashland's share of O&M costs for the entire system would be \$278,000, while its share of O&M costs for the tributary system would be \$280,000. (Id. at p. 20, n. 13, citing to calculations set forth at p. 33 of Framingham's Initial Brief). The Department therefore declined to apply Ashland's proposed alternative formula, where it

incorporated estimated rather than actual O&M costs, and would not change the end result for Ashland in any event. (Id. at pp. 20-21).

Ashland now complains that it does not know what the DTE meant when it concluded that the “effect of adjusting both total flow and total O&M by the same factor is for these adjustments to cancel each other out.” (Ashland’s Motion, at 1). Where the DTE expounded on this analysis for three pages, this complaint seems disingenuous, at the least. When one reads this section of the Final Order in its entirety, the meaning of the DTE’s language is clear – in strictly mathematical terms, if two numbers are reduced by the same percentage, the two numbers still will have the same relationship to one another, and the ratio of those two numbers will be the same. In this case, the DTE found that the reduction of total flow and total O&M by the same factor (60%) resulted in no change to the rate to be paid by Ashland to Framingham. Framingham respectfully submits that neither party needs further clarification of this finding.

Ashland also asserts that it is entitled to six months’ advance notice of Framingham’s expected O&M and capital expenditures. (Ashland’s Motion, at p. 1).<sup>1</sup> Of course, this assertion is not really in the nature of a request for clarification, as Ashland did not introduce any argument or evidence during the four-day evidentiary hearing as to the need for or practicability of such notice. Moreover, the IMA does not require such notice. To the contrary, the IMA provides that Framingham should bill Ashland for its use of the system at six-month intervals, based on actual usage during the preceding six-month period. (IMA, Exh. FR-14, ¶ 5, copy

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<sup>1</sup> In declining to rule on Framingham’s request that the Department order Ashland to install metering devices at Ashland’s two discharge points, the Department expressly held that its jurisdiction was limited to determination of the “proper and just sum” due from Ashland, and that it had no jurisdiction to order specific performance of any term of the IMA or to award equitable relief. (Final Order, p. 44). The Department reached the same conclusion with respect to Framingham’s request that the Department award retroactive relief. See February 28, 2003 Scope Order, p. 11, n. 7. Ashland’s request that the Department order Framingham to provide six-months’ advance notice of any anticipated expenditures similarly is outside the scope of the Department’s jurisdiction, as there is no notice requirement set forth in either the parties’ IMA (See Tab A) or the Special Act authorizing the parties to enter into the IMA (See St. 1946, c. 86, § 1).

attached at Tab A). In its Final Order, the DTE adopted this same approach, requiring the parties to calculate Ashland's payment using final budget numbers, and flow data from the same period. (Final Order, pp. 21-22). Framingham further notes that its annual O&M expenditures, as reflected in Exh. DTE-F-1-18, have not varied significantly year-to-year in the 1997-2003 period. Thus, Ashland should not have any significant difficulties in budgeting for its anticipated share of Framingham's cost of operating the system.<sup>2</sup>

Ashland also contends that it should have the opportunity to "review and comment" on proposed capital expenditures. (Ashland apparently has backed away from its original proposal that it should have "veto power over" proposed capital projects). Again, this suggestion is not really in the nature of a request for clarification, as the Department considered, but did not adopt, Ashland's position regarding the extent to which it should be involved in Framingham's decisions regarding its sewer system. (Final Order, p. 36). Nothing in the IMA or Special Act states that Ashland should be entitled to any special rights to review and comment on Framingham's proposed capital expenditures, or that such non-existent "rights" should be memorialized in the Department's Final Order regarding prospective rates.<sup>3</sup> Further, Ashland provides no explanation as to what Ashland would be entitled to do, even if the Department found that Ashland should be permitted to "review and comment" on proposed capital expenditures, nor does Ashland explain why it needs to have this language incorporated in the Final Order, where Ashland certainly does not need the permission of the Department to communicate its views on any anticipated capital expenditures to Framingham.

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<sup>2</sup> Framingham's capital expenditures on its sewer system have varied on an annual basis. (See Exh. FR-18). Framingham notes, however, that all capital expenditures are approved as warrant articles at Framingham's Annual Town Meeting or at Special Town Meetings called for particular purposes. Information regarding the budgeted capital expenditures pertaining to each warrant article is available to the public (and thus Ashland as well) in advance of its consideration at Town Meeting.

<sup>3</sup> See supra note 1 (discussing Department's ruling regarding limited scope jurisdiction).

Finally, Ashland seeks clarification as to which pipes are subject to the Department's "basic" calculation for apportioning capital costs, as opposed to the Department's alternative calculations for apportioning capital costs associated with the repair or replacement of parallel pipes, and for apportioning costs associated with a capital upgrade necessitated by only one town's need for additional capacity. (Ashland's Motion, p. 2). This request for clarification represents a misunderstanding of the portion of the Final Order dealing with capital upgrades. As Framingham reads this portion of the Order, the three formulas apply to the same set of pipes – the pipes identified at p. 28 of the Final Order, drawn from DTE-RR-8. (Final Order, p. 31). If the pipe segment to be repaired or replaced is a segment identified on DTE-RR-8 as having "parallel" segments, the second formula applies. (Final Order, pp. 38, 49). If the pipe segment is being repaired or replaced only because one of the two towns needs additional capacity, the third formula applies. (Final Order, pp. 38-39, 49-50). If neither of these circumstances exists, the first, or "basic," formula applies. (Final Order, pp. 38-48). Framingham does not see the need for any further clarification on this point.

In sum, while Framingham is not in agreement with every aspect of the Department's February 13, 2004 decision, Framingham denies that any part of the 51-page decision requires further elucidation. For this reason, Framingham respectfully requests that the Department deny Ashland's motion for clarification of the Department's decision.

Respectfully submitted,  
THE TOWN OF FRAMINGHAM,  
By its attorneys,

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